

82 E.A.
and contacts the top of the well/opening.

REMARKS

The action mailed 06/13/01 has been received and its contents carefully noted.

The above request for a corrected filing receipt was presented in the amendment filed 12/18/00, but that amendment was refused entry, and no corrected filing receipt has been received.

Confirmation, that the DISCLOSURE DOCUMENT PRESERVATION REQUEST filed 5/7/99 has been acted on, is also requested. Applicant's review of the file does not indicate that the Office has yet acknowledged such REQUEST.

Reconsideration of the rejection of claims 1,8,23-34 and 37-44 under 103(a) as being unpatentable over Dafforn in view of Senior.

Dafforn expresses no concern for sample getting out of the sample opening. Dafforn does want the sample opening to have good contact with the test strip to get complete absorption. Dafforn, col. 13, lines 14-18. That is at a location down inside Dafforn's housing. Presumably, otherwise sample might escape internally, into the housing spaces beneath the test strip. Thus, Dafforn's test strip is recessed within the sample opening.

Dafforn does not disclose any need for turning its device over, such as for photocopying as in the present disclosure.

Senior displays a protruding, exposed bibulous member which is intended to be soaked from a urine stream. It is clear that there

should be concern for shielding with a cap in such a case. Dafforn, in contrast, does not have a protruding, exposed bibulous member. Rather, Dafforn's bibulous bibulous member is hidden within its housing.

On the basis of these considerations, there is no suggestion or motivation present in the rejection which would have made the proposed modification of Dafforn on the basis of Senior obvious to one of ordinary skill in the art, in order to meet the provisions of claims 1,8,23-34 and 37-44 on the sealing of a sample well.

Additionally, claims 1,8,23-34 and 37-41 require sealing the top of the sample well, whereas Senior teaches a structure in which sample is not blocked at the top of its opening in its end 13.

Senior is like placing a tent over the area of concern, while the rejected claims require a positive sealing of an opening or well. Particularly is this distinction clear in the case of claims 27-34 and 42-44, which place the well/opening on a broad, lateral face. It is quite clever of the present inventors to see that a cap applied as in Senior will result in a direct closing off of the well/opening, rather than having a situation as in Senior where urine is free to leave the opening. That realization comes from the present inventors, rather than from Senior's teachings.

The snap fits of claims 37 and 38 are not suggested by whatever means might be used to assemble Dafforn's housing parts together. Senior, in fact, teaches a cap which is freely sliding.

The features of claims 40 and 41 are not found in either Dafforn or Senior. The statement in the action that photocopying is notoriously well known in the art is challenged and the examiner is requested to cite a reference which supports such statement.

The particular test strip required by claims 43 and 44 also appears to be lacking in both Dafforn and Senior.

The rejection of claims 1,8,23-36,39 and 42-44 on WO under 102(e) and the rejection of claims 37-38 and 41 on WO under 103(a) are traversed, because the version of 102(e) copied into the action requires a patent, not an application. The WO is an application. The new version of 102(e) does not apply to this application, in view of the fact that the filing date of this application is 09/23/97, well before the effective date of the new version. The new version is available on the PTO website, under PATENTS, Resources, AIPA ..., full text of the legislation. Section 4505 gives the new version of 102(e) and Section 4508 deals with the effective date and the applications which the new version affects.

It is also noted that a rejection by way of 102(a) on WO could easily be overcome. Thus, the WO publication date is only 5 days before the filing date of this application. Applicant's disclosure document appended to this application was filed with the USPTO on May 9, 1997, for instance, well before the WO publication date. Additionally, applicant's attached declaration, paragraph 2., shows reduction to practice at least as early as July-August, 1997.

The claims rejected under 102(e) on WO also distinguish over its disclosure. Thus, as to all claims rejected on WO, any sealing proposed in WO is not fluid tight, so that the cup could not be turned over. And, the sample well/openings in WO do not get sealed but, instead, sit in a urine bath. Particularly regarding claims 39, sample is not dropped in WO.

The 103(a) rejections on WO are also traversed for the reason that applicant does not agree that the missing features are notoriously well known in the art in the circumstances claimed here. The examiner is invited to apply suitable secondary references, if such can be found.

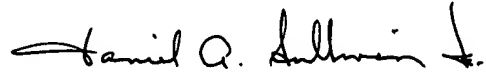
Claim 45 is a new claim presented to further distinguish over the situation in Senior for modifying Dafforn. Thus, in Senior, the sample opening is on an end, and the wall of Senior's cap facing that end is not a wall which contacts the top of the sample opening.

The specification has been correspondingly amended, to provide basis for claim 45, based on the original drawings and original specification, for instance at page 4, lines 20-22. The drawing has been amended to indicate numeral 5' in Fig. 2.

In rebuttal of any prima facie case of obviousness which might be made out, applicant presents the attached declaration of the third inventor, Gary Hoffman. As indicated, the invention has met with considerable acceptance.

On the basis of the above amendments and remarks,
reconsideration of the rejections and allowance of claims 1,8, and
23-45 are requested.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel A. Sullivan Jr.", followed by a small downward-pointing arrow.

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CHANGES TO THE SPECIFICATION

Delete the paragraph at page 3, line 21 through line 25, and replace such paragraph with the following:

--Fig. 2 is a perspective view showing the cartridge/cassette and cap/cover snapped or slipped together following deposit of the sample. Fig. 2 is a view as seen from the front or top. The cartridge/cassette 1 with the results window 2 has the cap/cover 5 snapped or slipped into place. The sample well/opening, 4 in the other Figures, is now covered and sealed by the cap/cover 5 in a fluid tight relationship. In sealing, wall 5' of cap/cover 5 faces the face 1a containing the well/opening 4 and contacts the top of the well/opening. By sealing the top of the sample well/opening, the cap/cover 5 transforms space 4b into a chamber for retention of sample while the sample wicks for the test. As indicated by the cap/cover region 5a showing in Fig. 2, when assembled with the cartridge/cassette passes around, and, in fact, encircles, the cartridge/cassette, in order to hold the cap/cover in a fluid tight relationship against the top of the sample well/opening.--